

The Gazette of India



EXTRAORDINARY
PART II—Section 2
PUBLISHED BY AUTHORITY

No. 41] NEW DELHI, THURSDAY, SEPTEMBER 24, 1964/ASVINA 2, 1886

Separate paging is given to this Part in order that it may be filed
as a separate compilation

LOK SABHA

The following Bill was introduced in Lok Sabha on the 24th September, 1964:—

BILL No. 67 OF 1964

A Bill further to amend the Indian Penal Code, 1860, the Code of Criminal Procedure, 1898, the Criminal Law Amendment Ordinance, 1944, the Delhi Special Police Establishment Act, 1946, the Prevention of Corruption Act, 1947 and the Criminal Law Amendment Act, 1952.

BE it enacted by Parliament in the Fifteenth Year of the Republic of India as follows:—

1. This Act may be called the Anti-Corruption Laws (Amendment) Act, 1964.

Short title.

5 2. In the Indian Penal Code,—

(1) in section 21,—

(i) for clause *Third*, the following clause shall be substituted, namely:—

Amendment
of Act 43
of 1860.

10 “*Third*.—Every judge including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;”;

(ii) in clause *Fourth*, after the words “officer of a Court of Justice”, the brackets and words “(including a liquidator, receiver or commissioner)” shall be inserted;

15 (iii) in clause *Ninth*, the words “and every officer in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty” shall be omitted;

(iv) for clause *Twelfth*, the following clause shall be substituted, namely:—

“*Twelfth*.—Every person—

(a) in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty by the Government; 5

(b) in the service or pay of a local authority, a corporation established by or under a Central, Provincial or State Act or a Government company as defined in section 617 of the Companies Act, 1956.”; 10 of 1956.

(v) *Explanation* 4 shall be omitted;

(2) in section 161, section 162 and section 163, after the words “the Legislature of any State”, the words and figures “or with any local authority, corporation or Government company 15 referred to in section 21” shall be inserted.

Amendment
of Act 5 of
1898.

3. In the Code of Criminal Procedure, 1898,—

(1) in section 198B,—

(a) in sub-section (1), the brackets and words “(other than the offence of defamation by spoken words)” shall be omitted; 20

(b) after sub-section (5), the following sub-section shall be inserted, namely:—

“(5A) Every trial under this section shall be held *in camera* if either party thereto so desires or if the Court of Session so thinks fit to do.”; 25

(c) after sub-section (13), the following sub-section shall be inserted, namely:—

“(14) Where a case is instituted under this section for the trial of an offence, nothing in sub-section (13) shall be construed as requiring a complaint to be made also by the person aggrieved by such offence.”; 30

(2) in sub-section (2) of section 222, for the words “dishonest misappropriation of money, it shall be sufficient to specify the gross sum”, the words “dishonest misappropriation of money or other movable property, it shall be sufficient to specify the gross sum or, as the case may be, describe the movable property” shall be substituted; 35

(3) in sub-section (1) of section 492, for the words “The State Government”, the words “The Central Government or the State Government” shall be substituted; 40

(4) in sub-section (1) of section 495, for the words "generally or specially empowered by the State Government", the words "generally or specially empowered by the Central Government or the State Government" shall be substituted.

- 5 4. In the Schedule to the Criminal Law Amendment Ordinance, 1944, after item 4, the following item shall be inserted, namely:— Amendment
of Ordinance
38 of 1944.

2 of 1947. "4A. An offence punishable under section 5 of the Prevention of Corruption Act, 1947."

- 10 5. In the Delhi Special Police Establishment Act, 1946, in section 5, after sub-section (2), the following sub-section shall be inserted, namely:— Amendment
of Act 25 of
1946.

15 " (3) Where any such order under sub-section (1) is made in relation to any area, then, without prejudice to the provisions of sub-section (2), any member of the Delhi Special Police Establishment of or above the rank of Sub-Inspector may, subject to any orders which the Central Government may make in this behalf, exercise the powers of the officer in charge of a police station in that area and when so exercising such powers, shall be deemed to be an officer in charge of a police station discharging the functions of such an officer within the limits of his station."

6. In the Prevention of Corruption Act, 1947,—

Amendment
of Act 2 of
1947.

(1) in section 4,—

25 (a) in sub-section (1), after the words and figures "or section 165 of the Indian Penal Code", the words, brackets, letters and figures "or of an offence referred to in clause (a) or clause (b) of sub-section (1) of section 5 of this Act punishable under sub-section (2) thereof" shall be inserted;

30 (b) in sub-section (2), after the words, figures and letter "section 165A of the Indian Penal Code", the words, brackets and figures "or under clause (ii) of sub-section (3) of section 5 of this Act" shall be inserted;

(2) in section 5,—

(a) in sub-section (1),—

35 (i) the words "in the discharge of his duty" shall be omitted;

(ii) after clause (d), the following clause shall be inserted, namely:—

“(e) if he or any person on his behalf is in possession or has, at any time during the period of his office, been in possession, for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.”;

(b) in sub-section (2), the words “in the discharge of his duty” shall be omitted; 10

(c) for sub-sections (2A) and (3), the following sub-sections shall be substituted, namely:—

“(3) Whoever habitually commits—

(i) an offence punishable under section 162 or section 163 of the Indian Penal Code, or 15 45 of 1860.

(ii) an offence punishable under section 165A of the Indian Penal Code,

shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to seven years, and shall also be liable to fine: 20

Provided that the court may, for any special reasons recorded in writing, impose a sentence of imprisonment of less than one year.

(3A) Whoever attempts to commit an offence referred to in clause (c) or clause (d) of sub-section (1) shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both. 25

(3B) Where a sentence of fine is imposed under sub-section (2) or sub-section (3), the court in fixing the amount of fine shall take into consideration the amount or the value of the property, if any, which the accused person has obtained by committing the offence or where the conviction is for an offence referred to in clause (c) of sub-section (1), the pecuniary resources or property referred to in that clause for which the accused person is unable to account satisfactorily.”; 30 35

(3) for section 5A, the following section shall be substituted, namely:—

5 of 1898.

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“5A. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1898, no police officer below the rank,—

Investigation into cases under this Act.

(a) in the case of the Delhi Special Police Establishment, of an Inspector of Police;

(b) in the presidency-towns of Calcutta and Madras, of an Assistant Commissioner of Police;

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(c) in the presidency-town of Bombay, of a Superintendent of Police; and

(d) elsewhere, of a Deputy Superintendent of Police,

45 of 1860.

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shall investigate any offence punishable under section 161, section 165 or section 165A of the Indian Penal Code or under section 5 of this Act without the order of a Presidency Magistrate or a magistrate of the first class, as the case may be, or make any arrest therefor without a warrant:

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Provided that if a police officer not below the rank of an Inspector of Police is authorised by the State Government in this behalf by general or special order, he may also investigate any such offence without the order of a Presidency Magistrate or a magistrate of the first class, as the case may be, or make arrest therefor without a warrant:

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Provided further that an offence referred to in clause (e) of sub-section (1) of section 5 shall not be investigated without the order of a police officer not below the rank of a Superintendent of Police.

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(2) If, from information received or otherwise, a police officer has reason to suspect the commission of an offence which he is empowered to investigate under sub-section (1) and considers that for the purpose of investigation or inquiry into such offence, it is necessary to inspect any bankers' books, then, notwithstanding anything contained in any law for the time being in force, he may inspect any bankers' books in so far as they relate to the accounts of the person suspected to have committed that offence or of any other person suspected to be holding money on behalf of such per-

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son, and take or cause to be taken certified copies of the relevant entries therefrom, and the bank concerned shall be bound to assist the police officer in the exercise of his powers under this sub-section:

Provided that no power under this sub-section in relation to the accounts of any person shall be exercised by a police officer below the rank of a Superintendent of Police, unless he is specially authorised in this behalf by a police officer of or above the rank of a Superintendent of Police.

Explanation.—In this sub-section, the expressions “bank” and “bankers’ books” shall have the meanings assigned to them in the Bankers’ Books Evidence Act, 1891.”; 18 of 1891.

(4) in sub-section (1) of section 6, after the word, brackets and figure “sub-section (2)”, the words, brackets, figure and letter “or sub-section (3A)” shall be inserted; 15

(5) after section 6, the following section shall be inserted, namely:—

Particulars
in a charge
in relation
to an offence
under
section
5(1)(c).

“6A. Notwithstanding anything contained in the Code of Criminal Procedure, 1898, when an accused is charged with an offence under clause (c) of sub-section (1) of section 5, it shall be sufficient to describe in the charge the property in respect of which the offence is alleged to have been committed, and the dates between which the offence is alleged to have been committed, without specifying particular items or exact dates, and the charge so framed shall be deemed to be a charge of one offence within the meaning of section 234 of the said Code: 5 of 1898. 20 25

Provided that the time included between the first and last of such dates shall not exceed one year.”;

(6) in section 7, the words, brackets and figure “sub-section (2) of” shall be omitted; 30

(7) after section 7, the following section shall be inserted, namely:—

The Code
of Criminal
Procedure,
1898, to
apply
subject
to certain
modifica-
tions.

“7A. The provisions of the Code of Criminal Procedure, 1898, shall, in their application to any proceeding in relation to an offence punishable under section 161, section 165 or section 165A of the Indian Penal Code or under section 5 of this Act, have effect as if,— 35 5 of 1898. 45 of 1860.

(a) in sub-section (8) of section 251A, for the words “The accused shall then be called upon”, the words “The accused shall then be required at once to give in writing 40

a list of the persons (if any) whom he proposes to examine as his witnesses and of the documents (if any) on which he proposes to rely, and he shall then be called upon" had been substituted;

5 (b) in sub-section (1A) of section 344, after the second proviso, the following proviso had been inserted, namely:—

10 "Provided also that the proceeding shall not be adjourned or postponed merely on the ground that an application under section 435 has been made by a party to the proceeding.";

(c) in sub-section (1) of section 435, before the *Explanation*, the following proviso had been inserted, namely:—

15 "Provided that where the powers under this sub-section are exercised by a court on an application made by a party to such proceedings, the court shall not ordinarily call for the record of the proceeding—

20 (a) without giving the other party an opportunity of showing cause why the record should not be called for; or

(b) if it is satisfied that an examination of the record of the proceeding may be made from the certified copies thereof;

25 and in any case, the proceedings, before the inferior court shall not be stayed except for reasons to be recorded in writing.";

(d) after sub-section (2) of section 540A, the following sub-section had been inserted, namely:—

30 "(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), the judge or magistrate may, if he thinks fit and for reasons to be recorded by him, proceed with inquiry or trial in the absence of the accused or his pleader and record the evidence of any witness, subject to the right of the accused to recall the witness for cross-examination.";

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(8) in section 8, after the word, brackets and figure "sub-section (2)", the words, brackets, figure and letter "or sub-section (3A)" shall be inserted.

40 7. In the Criminal Law Amendment Act, 1952, in clause (a) of sub-section (1) of section 6, the words, brackets and figure "sub-section (2) of" shall be omitted.

Amendment of Act 46 of 1952.

STATEMENT OF OBJECTS AND REASONS

The Committee on Prevention of Corruption was appointed in 1962 to review the problem of corruption and to suggest measures to combat it. The Committee has made various suggestions for dealing with the problem and has, *inter alia*, recommended certain changes in the law to ensure speedy trial of cases of bribery, corruption and criminal misconduct, and to make the law otherwise more effective. The Bill is intended to give effect to such of these recommendations that have been accepted.

2. The following are the main features of the Bill:—

(a) The definition of 'public servant' in section 21 of the Indian Penal Code is proposed to be amended so as to bring within its purview certain additional categories of persons such as persons performing adjudicatory functions under any law, liquidators, receivers, commissioners, etc.

(b) The Code of Criminal Procedure, 1898 is being amended so as to bring within the purview of section 198B of the Code the offence of defamation by spoken words also and to make it clear that it should not be necessary to take the consent of the person defamed before proceedings are instituted under the section. It is also proposed to provide that trials under this section may be held *in camera* under certain circumstances. Besides, it is also proposed to amend the Code so as to empower the Central Government to appoint public prosecutors.

(c) The Delhi Special Police Establishment Act, 1946 is being amended to enable officers of the Delhi Special Police Establishment, not below the rank of a Sub-Inspector, to exercise the powers of an officer in charge of police station.

(d) The Committee has recommended a number of important amendments to the Prevention of Corruption Act, 1947. It has suggested that the presumptions enunciated in sub-sections (1) and (2) of section 4 of the Act should be made available also in respect of offences under section 5 and possession of disproportionate assets should be made a substantive offence. It has also recommended that habitually corrupting public servants should be made an offence and that attempts to commit certain offences

under section 5 of the Act should also be made punishable. Certain other recommendations in regard to investigation into corruption cases have also been made. It is proposed to give effect to all these recommendations, subject, of course, to suitable safeguards.

The Committee has suggested certain amendments to the Code of Criminal Procedure, 1898, particularly to the provisions relating to the inspection of documents (in so far as they have a bearing on the inspection of bankers' books), adjournments, stay of proceedings, calling of records, recording of evidence in the absence of the accused, etc. As these recommendations have been made in the context of the limited problem of prevention of corruption, it is proposed to give effect to them by inserting suitable provisions in the Prevention of Corruption Act, 1947.

(e) Further, it is considered necessary to take powers to obtain an order of attachment of money or other property believed to have been obtained by the commission of offences under section 5 of the Prevention of Corruption Act, 1947 and for this purpose, it is proposed to amend the Criminal Law Amendment Ordinance, 1944, suitably.

(f) The Criminal Law Amendment Act, 1952 is being amended to make the new offences under the Prevention of Corruption Act also triable by special courts.

NEW DELHI;
The 11th September, 1964.

JAI SUKHLAL HATHI.

PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF
THE CONSTITUTION OF INDIA

[Copy of letter No. 43/34/64-AVD, dated the 11th September, 1964 from Shri Jai Sukh Lal Hathi, Minister of State in the Ministry of Home Affairs to the Secretary, Lok Sabha.]

The President having been informed of the subject matter of the Anti-Corruption Laws (Amendment) Bill, 1964, recommends the introduction and consideration of the Bill in the Lok Sabha under articles 117(1) and 117(3) of the Constitution of India.

Notes on clause

Clause 2.—This clause seeks to amend the Indian Penal Code.

Sub-clause (1).—'Public servant' has been defined in section 21 of the Code and it is proposed to amend it so as to bring within its purview certain additional categories of persons, namely,

- (a) persons discharging adjudicatory functions,
- (b) liquidators, receivers and commissioners appointed by courts and
- (c) persons in the service or pay of any statutory corporation which is not engaged in any trade or industry.

Sub-clause (2).—The amendments are of a consequential nature.

Clause 3.—This clause seeks to amend the Code of Criminal Procedure, 1898.

Sub-clause (1).—This sub-clause seeks to amend section 198B of the Code. Under this section, public prosecutors are empowered under certain circumstances to file complaints in respect of offences of defamation other than by spoken words against the President, Vice-President, Ministers and other public servants in respect of their conduct in the discharge of their public functions. It is proposed to amend section 198B so as to enable proceedings, being taken thereunder, even in respect of an offence of defamation by spoken words. It is further proposed to provide that a trial under the section may be held *in camera* under certain circumstances. Doubts have arisen as to whether a public prosecutor can file a complaint under this section without the consent of the public servant alleged to have been defamed. It is proposed to make it clear that it will not be necessary to obtain the consent of the public servant for instituting proceedings under the section.

Sub-clause (2).—This sub-clause seeks to amend sub-section (2) of section 222 of the Code for providing that even in cases of dishonest misappropriation of movable property other than money, it shall be sufficient to describe in the charge the movable property in respect of which and the dates between which the offence is alleged to have been committed without specifying particular items or exact dates. This is for avoiding multiplicity of proceedings in such cases.

Sub-clause (3).—This sub-clause seeks to amend section 492 of the Code to enable the Central Government to appoint public prosecutors. Such a power is necessary for dealing expeditiously with corruption cases.

Sub-clause (4).—The amendment made by this sub-clause is of a consequential nature.

Clause 4.—This clause seeks to amend the Criminal Law Amendment Ordinance, 1944 which provides for attachment of money or other property believed to have been obtained by the commission of offences specified in the Schedule thereto. To facilitate similar action in relation to offences under the Prevention of Corruption Act, 1947, it is proposed to include those offences also in the Schedule.

Clause 5.—This clause seeks to amend section 5 of the Delhi Special Police Establishment Act, 1946 for enabling officers of the Delhi Special Police Establishment not below the rank of a Sub-Inspector of Police to exercise the powers of an officer in charge of a police station. Such powers are necessary for speedy investigation into corruption cases.

Clause 6.—This clause seeks to amend the Prevention of Corruption Act, 1947.

Sub-clause (1).—Section 4 of the Prevention of Corruption Act provides that on proof of certain facts constituting an offence under section 161, 165 or 165A of the Indian Penal Code, the motive requisite under those sections shall be presumed unless the contrary is proved. This sub-clause seeks to amend the said section 4 so as to provide that a similar presumption as to motive shall be made also in cases of offences under the Prevention of Corruption Act which involve motive as an ingredient thereof, namely, the offences referred to in clauses (a) and (b) of sub-section (1) of section 5 of the Act and the offence under clause (ii) of proposed sub-section (3) of the said section 5.

Sub-clause (2).—This sub-clause seeks to amend section 5 of the Act,—

(i) to cover offences of criminal misconduct by public servants acting as intermediaries by deleting the words 'in the discharge of his duty';

(ii) to make possession of assets by public servant disproportionate to the known sources of his income for which he cannot satisfactorily account, a substantive offence;

(iii) to make habitual commission of offences under sections 162, 163 and 165A of the Indian Penal Code, substantive offences;

(iv) to make attempts to commit offences of criminal misconduct referred to in clause (c) or clause (d) of sub-section (1) of the section also, punishable, and

(v) to make certain consequential changes.

Sub-clause (3).—This sub-clause seeks to substitute a new section 5A for existing section 5A of the Act. Sub-section (1) of the new section corresponds to the existing section 5A subject to two modifications aimed at facilitating quick investigation of corruption cases. The modifications are (a) for empowering Inspectors of the Delhi Special Police Establishment to investigate offences mentioned in the section without any authorisation as at present and (b) for empowering State Governments to authorise police officers, not below the rank of Inspectors, to investigate the said offences.

Experience has shown that for the effective and speedy investigation of the offences mentioned in sub-section (1) of the new section 5A, it is necessary to confer on the police officers empowered under that sub-section to investigate those offences, powers to inspect bankers' books, in so far as such books relate to the accounts of any person suspected to have been guilty of commission of any of the said offences. Sub-section (2) of new section 5A is for this purpose. To ensure that the powers are not abused, it has been provided that the powers shall not be exercised by a police officer below the rank of a Superintendent of Police unless he is specially authorised in this behalf by a police officer of or above the rank of a Superintendent of Police.

Sub-clause (4).—The amendments are of a consequential nature.

Sub-clause (5).—In the case of an offence of dishonest or fraudulent misappropriation or conversion of property entrusted to or under the control of a public servant referred to in clause (c) of sub-section (1) of section 5 of the Prevention of Corruption Act, it is often difficult to describe in the charge the exact dates on which the various items of the property have been so misappropriated or converted. To overcome this difficulty and also to avoid multiplicity of proceedings, it is proposed to provide that in such cases, it will be sufficient to describe in the charge the property in respect of which and the dates between which the offence is alleged to have been committed without specifying particular items or exact dates.

Sub-clause (7).—This sub-clause seeks to modify various provisions of the Code of Criminal Procedure in their application to any proceeding in relation to an offence punishable under section 161, section 165 or section 165A of the Indian Penal Code or under section 5 of the Prevention of Corruption Act, 1947. The modifications are for the purpose of ensuring speedy trial of the offences. The following are the modifications:—

(a) Section 251A of the Code of Criminal Procedure which deals with the procedure to be adopted in the trial of warrant cases instituted on a police report contains necessary provisions to ensure that the accused is supplied with important documents, namely, the documents referred to in section 173 of that Code, on which the prosecution wants to rely. The reason for this is that the accused should not be taken by surprise. The section does not cast a similar obligation on the accused to furnish to the prosecution a list of witnesses and documents on which he proposes to rely upon in his defence. The modification to section 251A is for the purpose of casting such an obligation.

(b) Suitable provision is being made to avoid adjournment or postponement of trials or inquiries on the ground merely that an application for revision is pending.

(c) Summoning of records and stay of proceedings by revisional courts cause considerable delay in the trial of cases. In order to minimise such delay, it is proposed to insert a new proviso in section 435(1) of the Code of Criminal Procedure for the purpose of laying down certain conditions which have to be fulfilled before a record may be called for or before the proceedings may be stayed.

(d) To avoid delay occasioned by absence of the accused, it is proposed to provide that the court may, in its discretion, proceed with the trial or inquiry and record the evidence even in the absence of the accused, while suitably protecting the right of the accused regarding cross-examination of the witnesses.

*Sub-clause (8).—*The amendment is of a consequential nature.

*Clause 7.—*This clause seeks to amend section 6 of the Criminal Law Amendment Act for making the new offences provided in the Prevention of Corruption Act, 1947 also triable by special judges.

FINANCIAL MEMORANDUM

Clause 7 of the Bill seeks to make the new offences relating to bribery and corruption under section 5 of the Prevention of Corruption Act, 1947, triable by special Judges. This may involve expenditure as it may be necessary to set up more special courts. The expenditure in respect of special courts in the States and in the Union Territories with separate Consolidated Funds of their own will be met from their respective Consolidated Funds. The expenditure in respect of special courts in the other Union Territories, however, will be met from the Consolidated Fund of India. The quantum of this expenditure is likely to be small but it cannot now be estimated with any degree of accuracy.

S. L. SHAKDHER,
Secretary.

